

REMARKS

Claims 1-3, 5-21 and 34 are pending. No amendments are made.

The Examiner objected to the drawings under 37 CFR 1.83(a) because "the first electrically insulative layer, as required in claims 14 and 20 must be shown or canceled from the claims." Applicants have herein added layer 121 as the electrically insulative layer in FIGs. 1-8 and have amended page 4, line 19 of the specification to refer to element 121. Replacement figures and paragraph have are included herewith in accordance with the new amendment procedure. (See USPTO OG Notices: 25 February 2003). No new matter is added to the specification. The electrically insulative layer is described on at least page 4, lines 11-19 of the specification. The objection should now be withdrawn.

In the Office Action (mailed May 16, 2003), the Examiner rejected claim 21 under 35 U.S.C. 112, second paragraph. In a telephone conversation on June 2, 2003, the Examiner withdrew the 112 rejection. Therefore, Applicants will not address this rejection as it is no longer pending. (The Examiner mailed on June 6, 2003 an Interview Summary which supports this.)

Applicants respectfully submit claims 1-3, 5, 7-10, 13, 14 and 18-21 are patentable over Loboda (U.S. 6,268,262) under 35 U.S.C. 103(a). The Examiner contends, Loboda teaches an airbridge, wherein it is clearly the intention that the second layer (13) has a thickness that is less than the combined thickness of the gap (14) and the first layer (12)." Applicants herein do not find support for such a clear intention. Furthermore, Applicants believe the only support that Examiner is relying upon is FIG. 10 of Loboda. As outlined on pages 8-9 of the Appeal Brief, it is improper for the Examiner to rely upon Loboda's drawings since Loboda fails to assert that the figures are drawn to scale. MPEP 2125 under the title "Proportions of Features in a Drawing are Not Evidence of Actual Proportions When Drawings are not to Scale" (which alone states that the Examiner cannot rely upon Loboda's drawings to teach proportions) states, "When the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value." The MPEP explains that when the drawings are not to scale the drawing features are only useful when relied upon in conjunction with the description. Loboda has no support in the description, alone or

with the drawings, for teaching or suggesting the second layer is less than a combined thickness of the first layer and the gap. Instead, the Examiner is improperly relying on the drawings alone.

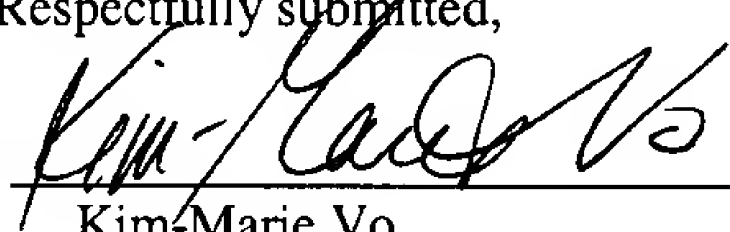
The MPEP bases its support on at least *Hockerson-Halberstadt, Inc. v. Avia Group Intern., Inc.*, 55 USPQ2d 1487, (Fed Cir. 2000). The court states in this case "Under our precedent, however, *it is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue.*" (emphasis added). Thus, the Examiner's reliance on Loboda is improper and in conflict with well established procedures under the case law and MPEP. For at least this reason, the reference is defective as use for a rejection and the Examiner has failed to provide a prima facie case of obviousness.

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